

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**W HOLDING COMPANY, INC., FRANK
STIPES GARCIA, JUAN C. FRONTERA
GARCIA, HÉCTOR DEL RÍO TORRES,
WILLIAM VIDAL CARVAJAL, CESAR
RUIZ, and PEDRO R. DOMINGUEZ
ZAYAS,**

Plaintiffs,

v.

**CHARTIS INSURANCE COMPANY OF
PUERTO RICO,**

Defendant

**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER OF
WESTERNBANK PUERTO RICO,**

Intervenor

CIVIL ACTION NO. 11-02271

RE: DECLARATORY JUDGMENT

**NOTICE OF REMOVAL OF THE FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER OF WESTERNBANK PUERTO RICO**

TO THE HONORABLE COURT:

COMES NOW, the Federal Deposit Insurance Corporation (“FDIC” or “Receiver”), an agency of the United States of America, as Receiver of Westernbank Puerto Rico (“Westernbank”), and pursuant to 12 U.S.C. § 1819 and 28 U.S.C. § 1446, gives notice of the removal of this action from the Court of First Instance, San Juan Part, Commonwealth of Puerto Rico, to this Court, and states as follows:

1. The FDIC is an agency of the United States with its principal office in Washington, D.C.

2. Pursuant to 12 U.S.C. § 1819(b)(2)(A), with certain exceptions not applicable to this case, all civil lawsuits in which the FDIC, in any capacity, is a party are deemed to arise under the laws of the United States. Pursuant to 12 U.S.C. § 1819(b)(2)(A) and 28 U.S.C. § 1331, this Court has subject matter jurisdiction over this action.

3. On or about October 6, 2011, Plaintiffs, W Holding Company, Inc., Frank Stipes Garcia, Juan C. Frontera Garcia, Héctor Del Río Torres, William Vidal Carvajal, Cesar Ruiz, and Pedro R. Dominguez Zayas, instituted this action by filing a complaint against Chartis Insurance Company of Puerto Rico (“Chartis”), formerly known as American International Insurance Company of Puerto Rico.

4. The Receiver filed a Complaint in Intervention in this action with the Commonwealth Court in order to assert and protect its rights and interests in and to the insurance policies that are the subject of this action, and its substantive rights and claims against Chartis, pursuant to the Puerto Rico Direct Action Statute. See Exhibit 1.

5. On April 30, 2010, the Office of the Commissioner of Financial Institutions of Puerto Rico appointed the FDIC as Receiver of Westernbank. The FDIC accepted the appointment as Receiver on that same date. See Exhibit 2.

6. Upon its appointment as Receiver, FDIC became the owner of the assets previously owned by Westernbank, including its rights and claims in and to the insurance policies that are the subject of this action, and its substantive rights and claims against Chartis under the Puerto Rico Direct Action Statute. See 12 U.S.C. § 1821(d)(2)(A).

7. Pursuant to 12 U.S.C. § 1819(b)(2)(B), the FDIC “may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court.” Venue is proper in this Court pursuant to 28 U.S.C. § 1446(a) as this Court is the United States

District Court for the district and division within which the State Court action is pending. Thus, FDIC may properly remove this action to this Court.

8. The Receiver is removing this action within ninety (90) days from the date it filed its Complaint in Intervention. Thus, this notice of removal is timely filed. 12 U.S.C. § 1819(b)(2)(B).

9. A copy of all pleadings, process, and orders served on the Intervenor, and other pleadings, process, and orders filed in the Commonwealth Court, are attached to this notice of removal as required by 28 U.S.C. § 1446(a). See Exhibit 3. As they are in the Spanish language, the Receiver requests a sixty-day extension of time to submit certified translations. If granted, the certified translations will be submitted to the Court on or before February 29, 2012.

10. Pursuant to 12 U.S.C. § 1819(b)(4), the Receiver is exempt from paying a filing fee in connection with this removal.

11. Pursuant to 28 U.S.C. § 1446(d), on this same date the Receiver is providing written notice of this removal to all parties in this action and has filed a copy of this notice of removal with the Clerk of the Court of First Instance, San Juan.

I HEREBY CERTIFY: that on this same date a true copy of Receiver's Notice of Removal was sent by regular mail to Harry N. Padilla Martinez, Apartado 2131, Mayaguez, Puerto Rico 00681; Jose M. Toro Iturrino, 20 Calle Dr. Feliz Tio, Suite 5, Sabana Grande, Puerto Rico 00637-1833; and to Héctor Saldaña Egozcue, Saldaña & Saldaña Egozcue, 208 Ponce de León Ave., Suite 1420, San Juan, Puerto Rico 00918-1015.

In San Juan, Puerto Rico, this 30 day of December 2011.

RESPECTFULLY SUBMITTED.

**TORO, COLON, MULLET, RIVERA
& SIFRE, PSC**

Post Office Box 195383

San Juan, Puerto Rico 00919-5383

Telephone: (787) 751-8999

Facsimile: (787) 763-7760

s/MANUEL FERNÁNDEZ-BARED

MANUEL FERNANDEZ-BARED

USDC-PR No. 204204

E-mail: mfb@tcmrslaw.com

s/JANE PATRICIA VAN KIRK

JANE PATRICIA VAN KIRK

USDC No. 220510

E-mail: jvankirk@tcmrslaw.com

**ATTORNEYS FOR FEDERAL
DEPOSIT INSURANCE
CORPORATION, AS RECEIVER
OF WESTERNBANK PUERTO RICO**